U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

File: [redacted] Office: Vermont Service Center Date: AUG [illegible] 03

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER: [redacted]

Identifying data deleted to prevent unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center, and the matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), in order to employ him as a religious teacher.

The director denied the petition, finding that the beneficiary's claimed service with the petitioner did not satisfy the requirement that he had been continuously carrying on a full-time salaried religious occupation for the two-year period immediately preceding the filing date of the petition. The director also determined that the petitioner had failed to establish that the beneficiary would be a full-time religious worker in the proffered position, and that the beneficiary would not be solely dependent upon supplemental employment or solicitation of funds for his financial support.

On appeal, counsel submits a brief asserting that the petitioner met its evidentiary burden to establish that the beneficiary had been continuously employed in a religious occupation for the two-year period immediately preceding the filing date of the petition, and that the Bureau arbitrarily denied the petition on this ground. Counsel further asserts that the petitioner assumed responsibility for the beneficiary's continued employment and remuneration, and that the petitioner should have been given an opportunity to clarify this issue if the Bureau doubted its ability to do so.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States--
>
> > (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
> >
> > (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
> >
> > (III) before October 1, 2003, in order to work for the organization (or for a bona fide

[redacted]

> organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and
>
> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The petitioner in this matter is a Muslim mosque, established in 1996, having a membership of 150 families. On December 20, 2001, the petitioner was determined to be exempt from federal income tax under section 501(a) of the Internal Revenue Code (IRC) as an organization described in section 501(c)(3).

The beneficiary is a native and citizen of Pakistan who last entered the United States in an unspecified manner on June 1, 1991 with authorization to remain until November 30, 1991. The beneficiary has remained in the United States unlawfully since the expiration of his authorized period of admission. The Form I-360 petition states that the beneficiary has never worked in the United States without Bureau permission.

The first issue to be examined in this proceeding is whether the petitioner has established that the beneficiary has had the requisite two years of continuous work experience in the proffered position.

Regulations at 8 C.F.R. § 204.5(m)(1) state, in pertinent part, that:

> All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on April 21, 2001. Therefore, the petitioner must establish that the beneficiary has been continuously engaged in a religious occupation for the two-year period beginning on April 21, 1999.

The petitioner asserts that the beneficiary has been employed as a full-time religious teacher under the supervision of the mosque from May 1999 to the filing date of the petition. The petitioner states that the beneficiary received compensation for his services directly from the Muslim families he serves, in the amount of $275.00 weekly. The petitioner states that it issued no Forms W-2 to the beneficiary and that he did not file income tax returns. The record includes a statement from City Financial Services indicating that the petitioner employs religious teachers at an annual salary

of $22,500.

Based on the information contained in the record, the beneficiary has been self-employed without authorization while in the United States in unlawful status. He received payments of $275.00 weekly directly from three families for whom he provided services. The record reflects that the petitioner employs religious teachers at an annual salary of $22,500. The record fails to contain adequate documentary evidence that the beneficiary has ever been paid or supported by the petitioner, or any other religious organization in a religious occupation for the two-year period immediately preceding the filing date of the petition. Therefore, the petition may not be approved.

The petitioner must also demonstrate that a qualifying job offer has been tendered.

8 C.F.R. 204.5(m)(4) states, in pertinent part, that:

> *Job offer.* The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

In this case, the petitioner has stated that it assumes responsibility for the beneficiary's support. However, the petitioner has not identified the specific terms of the beneficiary's remuneration. The record is not clear as to whether the beneficiary is to continue with his self-employment or he is to receive an annual salary from the petitioner, as the petitioner's other religious teacher employees do. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). It is concluded that the petitioner has not tendered a qualifying job offer.

Beyond the decision of the director, the petitioner has failed to establish that it was a qualifying organization at the time of filing the petition. Since the appeal will be dismissed for the above reasons, this issue need not be examined further.

In reviewing an immigrant visa petition, the Service must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. *See Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11

I&N Dec. 751 (Reg. Comm. 1966). Inherently, the Service must consider that the possible rationale for the instant petition is the petitioner's desire to assist the beneficiary to remain in the United States for purposes other than provided for under the special immigrant religious worker provisions.

Further, while the determination of an individual's status or duties within a religious organization is not under the Bureau's purview, the determination as to the individuals qualifications to receive benefits under the immigration laws of the United States rests with the Bureau. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.